

SENATE No. 1761

The Commonwealth of Massachusetts

PRESENTED BY:

Michael W. Morrissey

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to civil asset forfeiture.

PETITION OF:

NAME:

Michael W. Morrissey

DISTRICT/ADDRESS:

Norfolk and Plymouth

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO CIVIL ASSET FORFEITURE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 272 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding the following section:-

Section 106. (a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth: (1) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person relating to any transaction in violation of sections 4B, 6, 7, 8, 12, 13, 24 or 53A of this chapter, including all proceeds traceable to such transaction, or any moneys, negotiable instruments or securities used or intended to be used to facilitate any violation of said sections 4B, 6, 7, 8, 12, 13, 24 or 53A; (2) All real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements thereto, which is used in any manner or part, to commit or to facilitate the commission of a violation of said sections 4B, 6, 7, 8, 12, 13, 24 or 53A; (3) No forfeiture under this section shall extinguish a perfected security interest held by a creditor in a conveyance or in any real property at the time of the filing of a forfeiture action.

(b) Property subject to forfeiture under clauses (1) or (2) of subsection (a) shall, upon motion of the attorney general or district attorney, be declared forfeit by any court having jurisdiction over the property or having final jurisdiction over any related criminal proceeding brought under sections 4B, 6, 7, 8, 12, 13, 24 or 53A.

(c) The court shall order forfeiture of all real property subject to clause (2) of subsection (a), except as follows: (1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of sections 4B, 6, 7, 8, 12, 13 or 53A;

(2) No conveyance shall be forfeited by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States the commonwealth or of any state; (3) No conveyance or real property shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance or real property was used to violate section 4B, 6, 7, 8, 12, 13 or 53A and proof that the conveyance or real property was used to facilitate a violation of any said section, or combination thereof, on 3 or more different dates shall be prima facie evidence that the conveyance or real property was used in furtherance of and for the business of prostitution.

(d) A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property, moneys or any other thing of value subject to forfeiture under clause (1) or (2) of subsection (a). Such petition shall be filed in the court having jurisdiction over said conveyance, real property, monies or other thing of value or having final jurisdiction over any related criminal

proceeding brought under sections 4B, 6, 7, 8, 12, 13 or 53A. In all such suits where the property is claimed by any person, other than the commonwealth, the commonwealth shall have the burden of proving to the court the existence of probable cause to institute the action, and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to said clause (1) or (2) of said subsection (a). The owner of the conveyance or real property, or other person making such a claim there under shall have the burden of proof as to all exceptions set forth in subsection(c). The court shall order the commonwealth to give notice by certified or registered mail to the owner of the conveyance, real property, moneys or other thing of value and to such other persons as appear to have an interest therein, and the court shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition. Upon the motion of the owner of the conveyance, real property, moneys or other thing of value, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of sections 4B, 6, 7, 8, 12, 13 or 53A. At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order, from which the parties shall have a right of appeal. In all such suits in which a final order results in a forfeiture, the final order shall provide for disposition of the conveyance, real property, moneys or any other thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising, and notice, and the balance thereof shall be distributed as further provided in this section. The final order of the court shall provide that the moneys and proceeds of any such sale shall be distributed equally between the prosecuting district attorney or attorney general and the city,

town or state police department involved in the seizure. If more than 1 department was substantially involved in the seizure, the court having jurisdiction over the forfeiture proceeding shall distribute the 50 per cent equitably among these departments. There shall be established within the office of the state treasurer separate special law enforcement trust funds for each office of district attorney and for the attorney general. All such monies and proceeds received by any prosecuting district attorney or attorney general shall be deposited in such a trust fund and shall then be expended without further appropriation for the purposes of defraying the costs of law enforcement as such district attorney or attorney general deems appropriate. Within 90 days of the close of the fiscal year, each district attorney and the attorney general shall file an annual report with the house and senate committees on ways and means on the use of monies in such trust funds. All such moneys and proceeds received by any police department shall be deposited in a special law enforcement trust fund and shall be expended without further appropriation to defray the costs of to obtain federal grants or to accomplish such other law enforcement purposes as the chief of police of such city or town, or the colonel of state police deems appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of such department.

(e) Any officer, department or agency having custody of any property subject to forfeiture under this section or having disposed of such property shall keep and maintain full and complete records showing from whom it received the property, under what authority it held or received or disposed of the property, to whom it delivered the property, the date and manner of destruction or disposition of the property, and the exact kinds, quantities and forms of property. These records shall be open to inspection by the offices of the inspector general and the attorney general and all federal and state officers charged with enforcement of federal and state laws

84 prohibiting prostitution and human trafficking. Persons making final disposition or destruction of
85 such property under court order shall report, under oath, to the court the exact circumstances of
86 such disposition or destruction.

87 (f) During a pending proceeding the court may issue at the request of the commonwealth
88 *ex parte* any preliminary order or process as is necessary to seize or secure the property for
89 which forfeiture is sought and to provide for its custody including, but not limited to: an order
90 that the commonwealth remove the property if possible and safeguard it in a secure location in a
91 reasonable fashion; that monies be deposited in an interest-bearing escrow account; and that a
92 substitute custodian be appointed to manage such property. Property taken or detained under this
93 section shall not be replevable, but once seized shall be deemed to be lawfully in the custody of
94 the commonwealth pending forfeiture, subject only to the orders and decrees of the court having
95 jurisdiction thereof. Process for seizure of the property shall issue only upon a showing of
96 probable cause, and the application therefore and the issuance, execution and return thereof shall
97 be subject to chapter 276, in so far as applicable. A district attorney or the attorney general may
98 refer any real property, and any furnishings, equipment and related personal property located
99 therein and for which seizure is sought to the office of seized property management within the
100 division of capital asset management and maintenance. The office of seized property
101 management shall preserve and manage such property in a reasonable fashion and dispose of
102 such property upon a judgment ordering forfeiture issued pursuant to subsection (d), and to enter
103 into contracts to preserve, manage and dispose of such property. The office of seized property
104 management may receive initial funding from the special law enforcement trust funds of the
105 attorney general and each district attorney established pursuant to subsection (d) and shall

subsequently be funded by a portion of the proceeds of each sale of such managed property to the extent provided as payment of reasonable expenses in subsection (d).

(g) The owner of any real property which is the principal domicile of an immediate family member of the owner and which is subject to forfeiture under this section may file a petition for homestead exemption with the court having jurisdiction over such forfeiture. The court may, in its discretion, allow the petition exempting from forfeiture an amount allowed under section 1 of chapter 188. The value of the balance of the principal domicile, if any, shall be forfeited as provided in this section. Such homestead exemption may be acquired on only 1 principal domicile for the benefit of the immediate family of the owner.

(h) A forfeiture proceeding affecting the title to real property or the use and occupation thereof or the buildings thereon shall not have any effect except against the parties thereto and persons having actual notice thereof, until a memorandum containing the names of the parties to such proceeding, the name of the town wherein the affected real property lies, and a description of such real property sufficiently accurate for identification is recorded in the registry of deeds for the county or district wherein the real property lies. At any time after a judgment on the merits, or after the discontinuance, dismissal or other final disposition is recorded by the court having jurisdiction over such matter, the clerk of such court shall issue a certificate of the fact of such judgment, discontinuance, dismissal or other final disposition, and such certificate shall be recorded in the registry in which the original memorandum recorded pursuant to this section was filed.